(14)

S Kanara 9

1955 **File No.** 55

Legal DEPARTMENT

E BRANCH

Examined

Subject:— Suits. — Kanara

Institution of a suit against the United Karnatak Transport Co. Ltd', Kumta for the recovery of Rs 93-6-10 on account of demurrage

P.81
E

File No. 5 Kanara 9 55

Std. Sectt Slip 24-B

9/55

Legal Department.

R.L.A. in his opinion No.1672/A dated the 27th January 1953 advised that as no contract could be splet out from the correspondence carried on with the Company it would not be legally feasible to establish a claim in the course of law on the strength of any contract. He , however, further advised that as by keeping the railway receipts with itself the Company failed to use ordinary prudence and care and also prevented clearance by Govt. agencies ~~that~~ the Company would be liable in tort in respect of the demurrage paid by Government and a suit in respect of these damages can be filed against it.

2. Though the receipts were sent to the Company on 24-7-50, the matter was under correspondence until 27th July 1950 when the district officer I.C.V.I. explained certain points raised by the Company . The Company can be held liable for demurrage ~~damages~~ from the date the said letter was received by the Company and the amount of demurrage from that date can only be claimed from the Company. The Development Department is therefore requested to obtain and send the following information:-

(1) When was the letter dated 27th sent by the District Officer, ~~was~~ received by the Company.

(2) What is the proportionate amount of demurrage that can be claimed from the ~~date~~ till the articles were released on 2-8-50.

(3) What is the daily rate of demurrage charged by the railway.

Submitted for approval
This is as per verbal instructions

Sd/- M...
17/4/54

Office of the R.L.A.

Remembrancer of Legal Affairs in his opinion No. 1672/A dated the 27th January 1953 advised that as no contract could be splet out from the correspondence carried on with the Company it would not be legally feasible to establish a claim in the court of law on the strength of any contract. He, however, further advised that as by keeping the railway receipts with itself the Company failed to use ordinary prudence and care and also prevented clearance by Government agencies, the Company would be liable in tort in respect of the demurrage paid by Government and a suit in respect of these damages can be filed against it.

2. Though the receipts were sent to the Company on 24th July 1950, the matter was under correspondence until 27th July 1950 when the district officer, Industrial Co-operatives and Village Industries explained certain points raised by the Company. The Company can be held liable for demurrage from the date the said letter was received by the Company till the date of taking delivery and the amount of demurrage from that date can only be claimed from the Company. The Development Department is therefore requested to obtain and send the following information :-

(1) When was the letter dated 27th sent by the District Officer, received by the Company.

(2) What is the proportionate amount of demurrage that can be claimed from that date till the articles were released on 2nd August 1950.

(3) What is the daily rate of demurrage charged by the railway.

Submitted for signature
M/s 1/5

o/c

For Remembrancer of Legal Affairs.

U.R. to D.D., No. 11247/E, dated the 30th May 1954.

Issued 31/5

Sch(ML) with copy of the letter no. PT-Tri Fin/R dt 28/7/53 from the Regional I.T.U.I. Poona & the accepts letter dt 2 Tri Fin/R

File S-Ideas — 1959

MW
7/6/54 SS

A note containing information in accordance with the Law Officers' Rules No. 108 for institution of a suit on behalf of Government for recovery of demurrage charges suffered by Government from the United Karnatak Transport Company, Kumta.

(a) The circumstances which render the suit necessary

An order for the supply of looms and equipments for the Coir Factory (sanctioned under Government Resolution, Revenue Department, No. 1569/39, dated the 26th October 1948) at Honavar, District North Kanara, was placed with the firm in Alleppey (South India). The railway receipts for the consignment of the equipment were dispatched by the firm on the 19th July 1950 and were received by the District Officer for Industrial Co-operatives and Village Industries, Kumta, on the 24th July 1950. The District Officer then immediately entrusted the work of taking delivery of the equipment and transporting the same to Honavar by Motor lorry to the United Karnatak Transport Company, Limited, Kumta, and forwarded the railway receipts to the company under his letter No. Gen.K/30, dated the 24th July 1950) (Please vide page 119 of the File No. PC/Coir. Fy. 12). The company acknowledge the railway receipts and called for invoices and informed that the equipment would be transported in instalments. (Please vide letter No. 246/50, dated the 24th July 1950 from the company - page 169 of the file No. PC/Coir Fy/12). The District Officer duly replied to the company under his letter No. Gen.K.30, dated the 27th July 1950 regarding agreeing to the arrangement proposed by the company (please vide page 171 of the File No. PC/Coir Fy.12). But the Branch office of the company at Hubli failed to take delivery of the equipment at Hubli in time and when it was found by the company that the demurrage would exceed Rs. 1,000/-, the Hubli agent solicited instructions from the company at Kumta by telegram on the 31st July 1950 and informed the District Officer, when he went personally to Hubli to settle the matter, that he had neither sufficient number of trucks to take delivery and carry all the equipment straight from Hubli to Honavar nor sufficient funds to pay theheavy demurrage charges incurred and that it would take some time for him to effect delivery and transport the goods. When the District Officer found that no early arrangement was likely to be made by the company for taking delivery he had to make other arrangements to take delivery of the goods through some other agency in order to avoid further loss to Government by way of demurrage. The total demurrage paid in respect of this consignment was Rs. 1,040/7/- (Please vide letters No. Gen.K.30/51, dated the 1st May 1951 and No. Misc/H, dated the 29th April 1952 from the District Officer for Industrial Co-operatives and Village Industries, Kumta at pages 117 and 179 of the File No. PC/Coir Fy/12). The details of demurrage are given by the District Officer in his letter No. Gen.K.30/50, dated the 15/16th December 1950 at page 69 of the File No. PC/Coir/ Fy.12.

2. As it was found that the railway had charged excessive demurrage, the Chief Commercial Superintendent, Southern Railway, Madras, was approached for refund by the Joint Registrar for Industrial Co-operatives and Village Industries under the letter, No. Eng.127 (Coir), dated the 30th January 1951 (Page 91 of the file).

3. The Assistant Registrar, Co-operative Societies, Karwar was then requested to investigate into the matter. (Please vide this office letter No. Eng.127 Coir, dated the 12th November 1951 page 121 of the file). The report of the Assistant Registrar, Co-operative Societies, Karwar under his letter No. Eng.5/52, dated the 19th March 1952 is at page 139 of the File. It will be seen from the report that the company under its letters dated the 19th December 1951 and 22nd January 1952 (Page 141 and 143 of the File) disowned any liability. This office therefore again wrote to the company explaining as to how it was responsible for the demurrage (Please vide letter No. PC/Coir.Fy/12, dated the 3rd June 1952 page 189 of the File). The Company still did not accept any liability in the matter (Please vide letter No. 186/52, dated the 25th June 1952 fror the company at page 223 of the File).

4. While the question of liability was under consideration with Government a major portion of the amount of demurrage to the extent of Rs. 883/13/- was refunded by the Southern Railway (Please vide letter No. RO.5/1747. 48/51, dated the 12th December 1952 from the Chief Commercial Superintendent, Southern Railway - Page 295 of the File). The company was therefore again requested to pay the amounts of the balance of Rs. 156-10-0 of demurrage to Government (Please vide letter No. PC/Coir.Fy/12, dated the 28th April 1953 page 329 of the File). But the company stuck up to its argument put forth in its letter dated the 25th June 1952 and refused any liability in the matter. (Please vide letter No. 100/53, dated the 5th May 1953 from the Company - page 331 and 333)

5. It will be seen from the above correspondence that the company did not promptly inquire with the Station Master, Hubli, regarding the arrival of goods until 31st July 1950, which shows that by keeping the railway receipts with it, the company failed to use ordinary prudence and care and also prevented clearance of goods by Government. The company is therefore liable to pay Rs. 156-10-0 the balance of the demurrage suffered by Government due to the negligence of the company.

(b) The exact nature of the claim for which it is to be instituted.

The claim is for the recovery of the amount of Rs. 156-10-0 being the demurrage suffered by Government due to the negligence of the company.

(c) The steps, if any, which have been already taken to obtain satisfaction of the claim.

The company was asked by the Assistant Registrar, Co-operative Societies, Karwar to explain the reasons as to why it should not be made liable to pay the demurrage sufferred by Government due to its negligence. (Please vide letters No. Eng.(Coir), dated the 29th November 1951 and No. Eng.5, dated the 12th January 1952 from the Assistant Registrar, Co-operative Societies, Karwar - pages 205 and 207 of the File). The company informed that the question of liability on its part did not arise as it had not transported the goods from Hubli to Honavar (Please vide letters Nos. 494 dated the 19th December 1951, and No. 585, dated the 22nd January 1952 - pages 141 and 143). This office therefore wrote to the company explaining its negligence in the matter and requested it to pay the full demurrage of Rs. 1,040/7/- sufferred by Government. The company in reply furnished the facts of the case and refused its liability in the matter (Please vide company's letter No. 186/52, dated the 25th June 1952 - page 223 of the File). After a major portion of the demurrage was refunded by the Southern Railway the company was again requested under letter No. PC/Coir Fy.12, dated the 28th April 1953 (page 329 of the File) to pay the amount of Rs. 156-10-0 the balance of demurrage suffered by Government. But the company still refused any liability in the matter.

(d) What objection or execuse, if any, the defendant (i.e. the person against whom it is proposed to institute the suit) has urged against the claim.

The objections and execuses put forth by the company in its behalf are explained in the company's letter No. 186, dated the 25th June 1952 - page 223 of the file. In this letter the company has mentioned the date of the 2nd letter, No. Gen.K.30/50 of the District Officer for Industrial Co-operatives and Village Industries, Kumta as 28-7-50, whereas the correct date is 27-7-50.

e) The evidence both oral and documentary, which it is proposed to adduce in support of the claim.

(I) The letter No. Gen.K.30/50, datedthe 24th July 1950 from the District Officer for Industrial Co-operatives and Village Industries, Kumta to the United Karnatak Transport Co. Ltd., Kumta (Page 119 of the File).

(II) The letter No. 246/50, dated the 24th July 1950 from the United Karnatak Transport Co. Ltd., to the District Officer for Industrial Co-op--eratives and Village Industries, Kumta (Page 169 of the File).

(III) The letter No. Genk.30/50, dated the 27th July 1950 from the District Officer for Industrial Co-operatives and Village Industries, Kumta to the United Karnatak Transport Co. Ltd. (Page 171 of the File).

(VI) ---

(IV) The telegram issued by the Hubli Office of the company to its Head Office at Kumta on 31st July 1950 (A copy of the telegram would be produced if required)

(V) The oral statement that will be given by the then District Officer for Industrial Co-operatives and Village Industries, Kumta, explaining the circumstances which led him to arrange the transportation of the goods through other agencies (viz. M/s. Shevade and Company.

(f) The evidence which, so far as is known, the defendant will be able to adduce in his defence.

The company states that there was no acceptance of the contr-ct on the part of the Company in this transsaction, and it has not transported the goods. The District Officer for Industrial Co-operatives and Village Industries, Kumta did not reply to its letter, dated the 24th July 1950 till 27th July 1950. Besides the company has made clear in its letter dated the 24th July 1950 that the goods will be transported by instalments and expenses incurred in this connection will have to be borne by the District Officer, Kumta to which the District Officer agreed in his letter dated the 27th July, 1950- But subsequently the District Officer arranged transportation of goods through other agencies, on the grounds that there will be extra expenditure for carrying the goods in instalments and thereby broke the contracts with the company.

(g) Whether the circumstances of the defendent are such as to render it likely that satisfaction will be obtained of any decree that may be passed against him.

Yes. The company is a registered and limited company doing transportation work and satisfaction is likely to be obtained if any decree is passed against it.

(2) All documents relied upon and all the correspondence and other papers whether in English or in any regional language connected with the subject matter of the proposed suit, should be sent along with the report.

The file No. PC/Coir Fy/12, containing correspondence on the subject with the company by the Joint Registrar for Industrial Co-operatives and Village Industries is enclosed. The original letters referred to at (e) above will be produced from the Assistant Registrar, Co-operative Societies, Karwar in due course.

(3) The probability of the recovery of a sum at least equal to the costs should be ascertained before recommending the institution of any suit unless, for reasons which should be explained, it is considered that the suit should be brought notwithstanding that the recovery of costs is doubtful.

Since the United Karnatak Transport Company is a limited and established company there is probability of the recovery of a sum at least equal to the cost of suit.

Sd/- S.S. Rajagopalan,

For Joint Registrar for Industrial Co-operatives and Village Industries Poona.

HJB/3.

Office of the R.L.A.

Remembrancer of Legal Affairs in his opinion No. 1672/A dated the 27th January 1953 advised that as no contract could be splet out from the correspondence carried on with the Company it would not be legally feasible to establish a claim in the court of law on the strength of any contract. He, however, further advised that as by keeping the railway receipts with itself the Company failed to use ordinary prudence and care and also prevented clearance by Government agencies, the Company would be liable in tort in respect of the demurrage paid by Government and a suit in respect of these damages can be filed against it.

2. Though the receipts were sent to the Company on 24th July 1950, the matter was under correspondence until 27th July 1950 when the district officer, Industrial Co-operatives and Village Industries explained certain points raised by the Company. The Company can be held liable for demurrage from the date the said letter was received by the Company till the date of taking delivery and the amount of demurrage from that date can only be claimed from the Company. The Development Department is therefore requested to obtain and send the following information :-

(1) When was the letter dated 27th sent by the District Officer, received by the Company.

(2) What is the proportionate amount of demurrage that can be claimed from that date till the articles were released on 2nd August 1950.

(3) What is the daily rate of demurrage charged by the railway.

DEVELOPMENT DEPARTMENT
L.D 11247/E
File No. B 61585
Date 3/5/54

For Remembrancer of Legal Affairs.

U.R. to D.D., No. 11247/E, dated the 3rd May 1954

S.D.

Please see R.L.A.'s memo overleaf and office note of today's date on this Deptt file on the subject (~~DACPI~~ 1453/4736). follow up hereunto. This may await receipt of reply from the J&K Govt who is proposed to be addressed.

7/5/54

8/5

AS

DD

(Retd)

Resubmitted.

2. Please see the office note of today's date at P.23/N of the linked case No. CPI/454/80648. As proposed therein, this papers may be returned to the R.L.A. with the documents mentioned therein

case -

21-9-54

N

23/9

DS (9)

Pl. await till 8/1. await 5/9

Pl. await till 20/8 8/1. await 23/9 with papers CPI/454 65771

Pl. await till 10/7/54 with papers CPI/454 65771-A.

Pl. await Till 31/7 8/1. await 1-6-54 - since D.T. 18/5/54

Original in CPI 1454/80648-B.

Dev. Deptt.
(CPI 1454/80648-B).

Submitted with ref. to Govt. letter, No. CPI 1453/47367-B, dated the 11th May 1954.

2. The J.R. has furnished infn. on the three points raised by the R.L.A. in its Memo., No. 11247/E, dated the 3rd May 1954. The duplicate copy of the J.R.'s letter, dated the 29th Aug. 1954 and the duplicate copy of the letter, No. R06A/1747-48/51, dated the 16th June 1954, from the Rly. Co. may be forwarded to the R.L.A. This pps. No. LD 11247/E/ may be returned to him with (1) the duplicate copy of the J.R.'s letter, dated the 29th Aug. 1954 (2) duplicate copy of the Southern Rly's letter, dated the 16th June 1954, and (3) file No. PC/Coir Fy/12, of the J.R.

3. A copy of this office note may be kept in the L.D. pps. before they are returned.

Id/- C.B.K.
21-9-54
22

Id/- K.A.W.
23-9-54.

H[illegible]5. ... to R.L.A. (with file No. PC/Coir Fy/12) 29-9-54.

JMC 25/9

THE SECRETARY TO GOVERNMENT,
LEGAL DEPARTMENT.
28136
30/9/54

29 SEP 1954

Duplicate

No.Eng/CF/12/1.
Office of the Joint Registrar
for Industrial Cooperatives
and Village Industries,
Poona 1, 29th August 1954.

To

The Secretary to Government,
Development Department,
BOMBAY.

Subject: Coir Factory-cum-Training Institute,
Honavar, District Kanara.
Recovery of demurrage from the United
Karnatak Transport Company Ltd., Kumta.

Sir,

Please refer to Government Letter, Development Department, No.CPI 1453/47367-B, dated the 11th May, 1954.

2. The following remarks are offered in respect of the points raised in para 2 of the Government Memorandum No.11247/E dated the 3rd May, 1954 from the Remembrancer of Legal Affairs

(1) When was the letter dated 27th sent by the District Officer, received by the Company.

The Assistant Registrar, Cooperative Societies, Karwar who was requested to investigate and furnish the information reports as under :-

"On going through the past records of the Office of the District Officer for Industrial Cooperatives and Village Industries, Karwar, it is seen that the letter of the District Officer was not delivered through the local despatch book. It seems that the same has been handed over to the company personally. The following entry is, however, made in the remarks column of the Outward Register on 28.7.1950

"By hand delivery"

Under such circumstances, it is not possible to state the date and time of delivery of letter.

(2) The Company has also not stated the date on which the said letter was received by it. The Company, however, states in its letter No.186/52 dated 25th June 1952 (please vide p.223 of the File No.PC/Coir Fy/12) that the reply was sent under letter No.Gen.K.30/50 dated 28.7.1950, although the letter is dated 27.7.1950. From this and from the entry made in the outward register of the District Officer, it appears that the letter has been received by the Company on the 28th. It is, however, not possible to state the exact hour by which the letter was actually received by the Company and determine the exact liability of the company on that date.

(2) What is the proportionate amount of demurrage that can be claimed from that date till the articles were released on 2nd August 1950 ?

The Railway authorities originally charged demurrage to the extent of Rs.1,040-7-0 as shown in the letter No.Gen K-30/50, dated the 16th December, 1950, of the District Officer for Industrial Cooperatives and Village Industries, Kumta. (Please vide page 69 of the File No.PC/Coir Fy/12) Subsequently, however, an amount of Rs.883-13-0 was refunded by the Railway and the demurrage actually charged was Rs.156-10-0 for the two consignments as shown in the letter No.RO 6A/1747-48/51 dated 16th June 1954 from the Chief Commercial Superintendent, Southern Railway, Madras (copy enclosed). The demurrage charged by

the Railway works out about 2 pies per hour per ton. Assuming that the letter dated 27.7.1950 was received by the company before 12 noon on 28.7.1950 the proportionate amount of demurrage works out at Rs.93-6-10 as shown below :

Demurrage actually charged by Railway	Hours for which charged.	The demurrage that can be claimed from 28th July at 12 noon to 2nd August at 2 p.m. i.e. for 122 hours.
75- 10- 0	191.	48- 4-10.
81- 0- 0.	219.	45- 2- 0.
156- 10- 0		93- 6-10.

It may, however, be necessary to examine the exact hour from which the company would be liable for the payment of demurrage on 28.7.1950.

(3) What is the daily rate of demurrage charged by the Railway ?

The demurrage was originally charged at one anna per hour per ton as mentioned in the letter No.R06A/1747-48/51, dated 16th June 1954, from the Chief Commercial Superintendent, Southern Railway, Madras. The proportionate charges are, however, worked out on the basis of the amount of demurrage actually charged by the railway and not at the rate of one anna per hour per ton.

3. The file No.PC/Coir Fy/12 is returned herewith as desired by Government.

Yours faithfully,

O.C. signed by Joint Regr.

for Joint Registrar for Industrial Cooperatives and Village Industries, Bombay State, Poona -1.

KAR.28.

Duplicate

SOUTHERN RAILWAY.

No.R06A/1747-48/51. Chief Commercial Supdt.'s Office. Madras.

16th June, 1954.

To

The Joint Registrar for Industrial Co-operatives and Village Industries, POONA.

Dear Sir,

Sub: Inv.No.83 of 11/13-7-50 ex Cochin Harbour Terminus to Hubli - one wagon 94 handloom machinery articles and one copper vessel.
(2) Inv.No.84 of 13-7-50 ex Cochin Harbour Terminus to Hubli - 1 wagon 78 handloom machinery and 1 copper vessel.

With reference to your letter No.PC/CF/12 dated 28.5.54, the total amount of Rs.1,040-7-0 collected on the above bookings towards demurrage represents:

(i) Rs.465-9-0, demurrage due for 191 hours on 39 tons at one anna per hour per ton for Inv.No.83;

(ii) Rs.574-14-0, demurrage due for 219 hours on 42 tons at one anna per hour per ton for Inv. No.84.

Total: Rs.1,040-7-0.

76

Out of the sum of Rs.1040-7-0, as a special case, I agreed to retain only Rs.156-10-0 (Rs.75-10-0 on Inv. No183 and Rs.81-0-0 on Inv. No.84) and refund the balance of Rs.883-13-0 and this amount was refunded to you, vide this office letter of even number dated 13-12-53.

Yours faithfully,

Sd.

f. CHIEF COMML. SUPDT.

KAR.28.8.54.
(copy)

71 17

Kanara Suit against the United Karnatak Transport Co. Ltd., Kumta.

It is proposed to file a suit against the United Karnatak Transport Co. Ltd., Kumta for recovering a sum of Rs. 93-6-10 on account of demurrage.

2. In view of the information contained in Joint Registrar's letter dt/ 29th August 1954 only an amount of :. 93-6-10 out of the total amount of Rs. 156-10-0 can be claimed from the Co.

3. Sanction may be accorded to theinstitution of the suit on the lines of the accompanying Memorandum of Instructions.

MUC
20/11/55

hsp/19/1

RECEIVED IN DEVELOPMENT DEPARTMENT
21/11/55
43914 B

No 1591/E
d- 20/1/55

Sol (ML) Loc 204
Secy D.D. 22/11

Please

25/11

81 19

No. 1990/E
Office of the
Remembrancer of Legal Affairs,
Bombay Castle(Bombay No.1), 27-1-1955

Subject:- Institution of a suit against
M/s Gurukul Karnatak Transport
Co Ltd. Kunda

MEMORANDUM.

With reference to the subject noted above, the District Government Pleader, Karwar, is informed that institution of a suit against M/s Gurukul Karnatak Transport Company Ltd, Kunda is sanctioned and he is requested to take the necessary steps in accordance with the accompanying Memorandum, of Instructions, a copy of which is sent herewith in advance. He should sent the draft plaint for approval.

Papers of the case in File (s) received from M/s J.L Registrar for Industrial Co-operatives - Village Industries, Poona accompany

for Remembrancer of Legal Affairs.

To

The District Government Pleader, Karwar

KML/24/5

DD papers returned under acknowledgement No 5369/E dt 10/3/55

G.R.to pres under No. 21279/E

dt 28/9/55

From:

The District Government Pleader,Kanara.

To

The Remembrancer of Legal Affairs, Bombay.

No. 339 of 1955. Karwar, dated 14-4-1955.

Sir,

I received your letter No.1990 E dated 27-1-55 along with the file of papers, on 31-1-1955 for filing suit against the United Karnatak Transport Company Ltd.,Kumta. After studying the papers, I drafted the plaint. Thereafter on 6-2-1955 I addressed my letter No.118 ~~dated~~ to the District Officer for Industrial Co-Operative and Village Industries Kumta. Therein I requested him to supply me the date on which the Railway receipts were returned to his office by the Defendant-Company, and also to inform me whether the defendant -Company has its office at Kumta and as to whether it is running any busses or trueks. No reply was received from him and therefore I addressed a reminder letter to him on 15-3-1955 by registered post. In reply to this letter the said officer addressed me his letter dated 24th March 1955 that he had not received my letter No.118 dated 6-2-1955. Hence I again addressed him my letter No.279 dated 29-3-1955 supplying him a true copy of my previous letter. Yet no reply was received. The Court is to close for Summer vacation from 25th instant. So I again sent a reminder letter No.329 dated 12th April 1955. In reply he addressed me his letter No.5 dated 13th instant copy of which has been sent herewith. I sent for him this morning and he confirmed the fact that the Defendant-Company is no more in existance.The claim is after-all petty small one.I have sent herewith copy of the mamlatdar's letter as also copy of the letter addressed to me by the District Officer. As the company is not in existance I do not think it advisible to file any suit. I may therefore please be informed what I should do in the matter.

Yours faithfully,

Letter

No O/191 23
Kumta 25-8-54

To

The Assistant Registrar
Co-operative Societies, N. Kanara
Karwar

Reference:- your ENG 5 of 1954
dated 5-8-1954.

It is reported that the Sirsi
Transport Company Ltd., Kumta is
no more in existence

Sd/-
Mamlatdar, Kumta.

True copy
Sd/- [illegible]
District Office
14-4-55 I. C. [illegible]
Karwar

87, 25

No.Eng. 5 of 1955.
Office of the Assistant Registrar,
Co-operative Societies, N.Kanara,Karwar.
Dated the 13th April 1955.

To

The District Government Pleader, Karwar.

Sir,

Please refer to your letter No.329 dated 13-4-55 regarding drafting a plaint against the United Karnatak Transport Co,Ltd.,Kumta.

2. I regret that I was not able to send a reply to your letter No.279 dated 29-3-1955 which was received by me on 4-4-1955 nor see you, personally due to some urgent work on hand.

3. I furnish below the information required by you in your letter No.118 dated 6-2-1955.

i) From the records of this office, the date on which the railway receipts were returned to the District Officer and were received from the deft-company is not clear

ii) It is reported by the Mamlatdar of Kumta under his letter No.0/191 dated 7-8-1954 addressed to the

Assistant.Registrar C.S.Karwar that the said company is no more in existance. The Sub Inspector of Police Kumta has been requested to furnish the information regarding the number of busses or lorries which were run by that Company in July 1950.

Yours faithfully,

Sd.Illegible,

District Officer for Industrial Co-operatives and Village Industries,N.Kanara,Karwar.

" True Copy "

D.G. P.Kanara.

89 27

In the Court of the Civil Judge, S.Dn.,Karwar.

Civil suit No. of 1955.

State of Bombay Plaintiff.

Vs.

United Karnatak Transport Company Ltd., Kumta...Defendant

Claim: Rs.93-6-10. for all purposes.

The plaintiff begs to state as follows

1. That an order for supply of looms and equipments for the coir factory at Honavar had been placed with a Firm in Alleppey . The Firm despatched the goods by rail and forwarded the Railway receipts to the District Officer for Industrial co-operatives and village industries Kumta. The Railway Receipts were received by that officer on 24-7-1950. He entrusted the work of taking delivery of the equipment and transporting the same to Honavar by motor lorry to the defendant. He forwarded the Railway Receipts to the Defendant-Company under his No.Gen/K/30 dated 24-7-1950. The deft-Company acknowledged the receipt of the same and informed the District Officer under its letter No.246/50 dated 24-7-50 that the equipment would be transported in instalments. The District Officer under his letter No.Gen/K/30 dated 27-7-1950 informed the Deft-Company that the arrangement proposed by it had been accepted.

2. Two wagon loads of the said goods arrived at Hubli -Station each on 23rd July and 25th July 1950. But the Branch Office of the Deft-Company at Hubli failed to take delivery of the goods in time till 31-7-50 on which day it informed the District Officer of its inability either to accept the delivery of the goods or to make payment of the demurrage charges of about Rs.1000/- which had then become due, or to transport the same to Honavar on account of lack of sufficient number of lorries. The Deft-Company also failed to return the railway receipts immediately. They were returned to the District Officer on - - 195

3. As the Deft-Company thus failed to make arrangements for taking delivery of the goods, the District Officer was requested to make some other arrangement to take delivery inorder to avoid payment of additional demurrage. The total demurrage of Rs.1040-7-0 was required to be paid. It was however found that the Railway authority had charged excessive demurrage. So the matter was taken up with the Railway Authorities for refund of excess charges.

4. In the meanwhile enquiry was made into the matter and it was found that the Defendant-Company was responsible for the loss caused to the Government. The Deft was called upon to pay the amount but by its replies dated 19-12-1951 and 22-2-1952 the Company disowned its liability. The joint registrar for Industrial Co-operatives and Village Industries, Poona by his letter dated 3-6-1952 explained to the Deft-Company how the loss on account of the demurrage was caused to the Government by its failure to take action promptly and called upon the Deft to pay the amount. The Defendant however repudiated the liability in its letter dated 25-6-52.

5. While the question of liability was thus under consideration of the Government a major portion of the amount of demurrage coming to Rs.883-13-0 was refunded by the Railway. The balance of actual loss on account of demurrage suffered by the Government was therefore Rs.156-10-0. The Government examined the whole question. It was found that the Deft-Company had kept the railway receipts with itself and thus failed to use ordinary prudence. The Company was therefore liable for the loss caused to the Government. A notice was therefore served on the Deft-Company on 28-4-1953 to pay the amount of demurrage of Rs.156-10-0 and the Deft-Company was informed that on its failure to pay the amount legal steps would be taken, to recover the

33
31

the same. The Deft-Company however refused to pay the amount in its letter dated 5-5-1953. Hence this suit has been filed.

6. Though the receipts were sent to the Deft-Company on 24-7-1950 the matter was under correspondence until 27-7-1950 when the District Officer explained certain points raised by the Defendant -Company. His letter dated 27-7-1950 quoted above had been personally handed over on 28-7-1950 as his evidence by entering in the out-ward register in the District Officer's Office. The delivery of the goods was taken on 2-8-1950, after recovering the railway receipts from the said Company. The Company is thus liable for demurrage from 28-7-1950 to 2-8-50. The amount of demurrage for the said period comes to R.93-6-10. In addition to this the Plff claims interest at the rate of 6% per annum upto the date of suit on the said amount of demurrage.

7. The Defendant-Company has its office at Kumta. The transaction took place at Kumta and the delivery was to be given at Honavar. Hence this Court has jurisdiction to try this suit.

8. The cause of action for this suit arose on 24-7-1950 and on 28-7-1950.

9. The Deft-Company had agreed to transport the material in question. As a carrier the Deft-Company was responsible to transport the material expeditiously. Even as an Agent of the Plff to carry out the transport the Deft-Company was bound to carry out its obligations expeditiously. Lastly, even under ordinary principles of Law the Deft-Company ought to have used ordinary prudence. It ought to have returned the railway receipts expeditiously. Hence on all these grounds the Deft-Company is liable to reimburse the loss caused to the Government.

10. The plff therefore prays for a decree as follows :-

1. Rs.93-10-6 demurrage from 25-7-50 to 2-8-1950.

2. Interest on this amount from 2-8-1950 till today at the rate of 6% per annum with costs and such other reliefs as the Court may deem fit to grant as also future interest.

27 35

Legal Department.

Submitted.

2. Please see this draft memo. No. 1990/E, dated 27th January 1955 to the D.G.P., Kanara, sanctioning the institution of suit against the United Karnatak Transport Company Ltd., Kumta for the recovery of Rs. 93-6-10 and giving him instructions for the purpose.

Ap-81

3. Please see the D.G.P., Kanara letter at p.83. He states that the United Karnatak Transport Co. Ltd. is not in existence. As the amount to be recovered from the company is very small he considers it not advisable to file a suit. He therefore seeks instructions in the matter. He has however forwarded a draft plaint for approval.

#p.89-95

4. As the Company is functus officio the papers are submitted for orders. It may be stated here that from the D.G.P.'s letter it is not clear whether the Company has gone into liquidation. In view of the Company not being in existence no suit can be filed against it.

D.D. may see this.

Sec (M.L)

Please see the memo of instructions at p. 71 & 79 issued to the D.G.P to file a suit against the United Karnatak Transport Co, Kumta to recover Rs 93-6-10 from it. The D.G.P in his letter at p.83 says that the Co is no longer in existence and it is not possible to file a suit against it. Very probably after the State Transport Corporation was given monopoly to ply buses in Kanara, the United Transport Corporation Karnatak Transport Co might have gone out of existence. Under the circumstances it will be no use to pursue the matter. The proposed suit may therefore be dropped.

27.4.

Pl issue
M
29/4

Secy DGP
27/4

Secy DGP

RECEIVED IN DEVLLOPMENT DEPARTMENT
ON 29/4/55 62149 B
8884 R1
dt. 29/4/55

DD

(Sr.No. 62/149-B)

Submitted after discussion with the Secy. & the J.R. on 30-4-55

2. The work of taking delivery of the equipment reqd. for the coir factory at Honavar, ordered from M/S Coir Products & Allied Agencies, Alleppey, was entrusted to one firm, M/S United Karnataka Transport Co., Ltd, Kumta. Due to delay caused by this firm to remove the equipment from the Rly. Station, Govt. had to pay the demurrage charges of Rs. 104-7-0 to the Rly. The Railway allowed a refund of Rs 88-3/3-0 to Govt. The J.R. requested the firm to pay to Govt the balance of Rs. 15-4-0 but it refused. It was decided to recover this amount from the firm & the Legal Dept. was requested to arrange to take necy. steps in the matter (vide ~~G.O.~~ G.O. 9145/49367-B, dt 3-8-53). The L.D. accordingly instructed the DGP, Kanara, to file a suit in the court of law. The DGP has stated in his letter No 339, dt 14-4-55 to Govt. in the L.D. that the firm is no longer in existence, & as such it is not advisable to file any suit. The L.D. proposes to drop the proposed suit. The J.R. may be requested kindly to give his first impression to enable this office as soon as possible to decide in the matter. He may be requested to furnish this report as soon as possible.

2-55

3/5

Letter to J.R. for D.C. N.D., Bijapur, dt 3-5-55.

3/5

28(8)

C Sec 6/5 5/5

145/Hort

CO-OPERATIVE INDUSTRIES

Section C

Inward No. 4/147

Date 5/5

6/5

Rec'd 6-5-55

qp

dt 7/5

11

Below Government u.o.r. Development Department No.62149-B dated 3-5-1955 regarding recovery of demurrage charges from the United Transport Company.

.....

No.Eng.5
Poona, Dated the 2 July 1955.

Returned with compliments.

2. On enquiry with the Assistant Registrar, Cooperative Societies, Karwar it is learnt that the United Transport Co., Kumta has not yet been taken into liquidation. The Company in question has immovable property viz. buildings etc. worth about Rs.10,000/- at Kumta. It may, therefore, be possible to file a Civil Suit against the Company for the recovery of demurrage charges etc. due from it to the extent of Rs. 93-6-10 plus interest at the rate of 6 % per annum.

3, The Head Office of the Company is reported to be at Mangalore.

for Joint Registrar for
Industrial Cooperatives and
Village Industries, Poona.

To

The Secretary to Government,
Development Department, Bombay.

slg/29.7.

395

DD

(Sr. No. 79918-B)

Submitted kindly refer to the office note, dt 3-5-55.

2. The J.R. for D.C. N.D. has furnished info: to show that it is possible to file a Civil Suit against the United Transport Co., Kunta, for recovering the demurrage charges from it to the extent of Rs. 93-6-10 plus interest thereon at 6 p.c. p.a. The L.D. may be requested to take necy. further action in the matter.

L.D. 31 AUG 1955 E

copy 25/8/55

25/8

DS(O)

Ltr to L.D., dt 30th August 1955.

LETTERS TO GOVERNMENT DEPARTMENT. 25455 E 31/8/55

L.D. 22 AUG 1955

No. 75 of 1955.
Karwar, 20th August 1955.

From

The District Government Pleader,
Kanara, Karwar.

To

The Remembrancer of Legal Affairs,
Bombay.

Sir,

In your letter No.1990-E, dated 27-1-1955 you had asked me to file a suit against the U.K.T.Company ,Kumta. In my office letter No.339, dated 14-4-1955 I had pointed out to you the difficulties which arise in the case and I sought your advice as to whether it is advisable to file that suit. No reply has yet been received. I therefore request you to give me a final reply as to whether I should file a suit.

Yours faithfully,

Dist.Govt.Pleader,Karwar.

THE SECRETARY TO GOVERNMENT,
LEGAL DEPARTMENT
File No. 25183
Sub No. E
Branch 30/8/55

Bl. on the noting on p. 97, the L.D. D.D. note dt. 27-8-55 at p. 101 are in joint register endorsement at p. 99. The D.Gov.P, Karwar may be requested to file a suit. A copy of the Joint Registrar's endorsement may also be forwarded to the D.Gov.P for information

2 A draft plaint forwarded by the D.G.P (which is at p. 89-95 ante) as slightly amended appears to be in order and the D.G.P may be informed accordingly

END 1/9 Sol (M.L) 3-9

Jt Secy SO

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No. 19900/F

Office of the
Remembrancer of Legal Affairs,
Sachivalaya, Bombay, 9th September 1955.

Subject :- Institution of a suit against the United Karnatak Transport Co. Ltd., Kumta

Memorandum.

With reference to his letter No.752, dated the 20th 22nd August 1955, on the above subject, the District Government Pleader is informed that according to the information received from the Joint Registrar for Industrial Co-operatives and Village Industries, Poona the United Karnatak Transport Co.Ltd. is still in existence. A copy of the endorsement No.Eng.5 dated 2nd August 1955 from the Joint Registrar giving the information is enclosed. The District Government Pleader is therefore requested to file a suit against the above firm.

2. The draft plaint forwarded by him with his letter No.339 dated 14th April 1955 is approved subject to the following modifications :

(i) In para 5 of the draft for "Rs.883-14-0" substitute "Rs. 883-13-0";

(ii) In para 6 of the draft in line 11, for "25-7-1950" substitute "28-7-50";

(iii) In sub-para (1) of para 10 of the draft for "25-7-50" substitute "28-7-50".

for Remembrancer of Legal Affairs.

To

The District Government Pleader, Kanara,
Karwar.

8.9.

Submitted for approval & signature
8/9

LD

RI No 228/E 25/4.1.56

N.R to D.D No 469/E 25/6-1-56

Issued
8/2
6/1

Enclosed

25 Rly. Stamps/ST (NCR)

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Suits :

Kanara:—

For recovering a sum of Rs. 93-6-10 on account of demurrage.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No.-21279/E

Sachivalaya, Bombay, 28th September 1955.

Letter from the Joint Registrar for Industrial Co-operative and Village Industries, Poona—Forwarding papers and requesting sanction to the Institution of a suit against the United Karnatak Transport Co. Ltd., Kumta for the recovery of Rs. 93-6-10 on account of demurrage.

Memorandum to the District Government Pleader, Kanara, No. 1990/E, dated the 27th January 1955—Forwarding a copy of the Memorandum of Instructions in advance.

RESOLUTION.—Sanction is accorded to the Institution of a suit against the United Karnatak Transport Co. Ltd., Kumta for the recovery of Rs. 93-6-10 on account of demurrage.

By order and in the name of the Governor of Bombay,

original 1/12

for J. R. DHURANDHAR,
Secretary to Government.

Leg. H 536—1

Submitted for signature
P 16/2 D.S (civil)

[P.T.O.

To

*The Development Department,
The Joint Registrar for Industrial Co-operatives and Village Industries, Poona,
The District Government Pleader, Kanara (with two copies of Memorandum of Instructions).

*With a copy of Memorandum of Instructions.

No. of 1955.

Copy forwarded for information and guidance to

Memorandum of Instructions.

This is a proposal to file a suit against the United Karnatak Transport Co. Ltd., Kumta for recovering a sum of Rs. 93-6-10 on account of demurrage which Government was required to pay as a result of gross negligence of the said Company in retaining the Railway Receipts which prevented clearance of looms and equipments by Government agencies.

2. An order for supply of looms and equipments for the Coir Factory at Honavar was placed with a firm in Alleppey. The firm despatched the goods by rail and forwarded the Railway Receipts to the District Officer for Industrial Co-operatives and Village Industries, Kumta. The Railway Receipts were received by that Officer on 24th July 1950. The District Officer entrusted the work of taking delivery of the equipment and transporting the same to Honavar by Motor Lorry, to the United Karnatak Transport Co. Ltd., Kumta and forwarded the Railway Receipts to the Company under his No. Gen-K/30, dated the 24th July 1950. The Company acknowledged the receipt of the same and informed the District Officer under its letter No. 246/50, dated 24th July 1950 that the equipment would be transported in instalments. The District Officer under his letter No. Gen. K. 30, dated 27th July 1950 informed the Company that the arrangement proposed by it was accepted. That letter seems to have been handed over personally on 27th July 1950 as is evidenced by an entry in the Outward Register in the District Officer's Office. Two wagon loads of the said goods arrived at Hubli Station each on 23rd July and 25th July 1950. But the branch office of the Company at Hubli failed to take delivery of the goods in time till 31st July 1950 on which day it informed the District Officer of its inability either to accept the delivery of the goods or to make payment of demurrage charges of about Rs. 1,000 which had then become due or to transport the same to Honavar on account of lack of sufficient number of lorries. The Company also failed to return the Railway Receipts immediately. The District Government Pleader is requested to ascertain the date of return of Railway Receipts from the said District Officer. As the Company thus failed to make arrangements for taking delivery of the goods, the District Officer, was requested to make some other arrangement to take delivery in order to avoid payment of additional demurrage. A total demurrage of Rs. 1,040-7-0 was required to be paid. It was however found that the Railway Authorities had charged excessive demurrage, so the matter was taken up with the Railway Authorities on 30th January 1951 for refund of excess charges.

3. In the meanwhile an enquiry was made into the matter and it was found that the Company was responsible for the loss caused to Government. The Company was called upon to pay the amount but by its replies, dated 19th December 1951 and 22nd February 1952 the Company disowned any liability. The Joint Registrar for Industrial Co-operatives and Village Industries, Poona, by his letter No. PC/Coal/FY/2, dated 3rd June 1952 again explained to the Company how the loss on account of demurrage was caused to Government by its failure to take action promptly and called upon the Company to pay the amount. The Company however under its letter, dated 25th June 1952 repudiated the liability.

4. While the question of liability was under consideration of Government, a major portion of the amount of demurrage coming to Rs. 883-13-0 was refunded by the Railway. The balance of actual loss on account of demurrage suffered by Government was therefore Rs. 156-10-0. The matter was referred to Government. The Government examined the whole question and found that there was no agreement or writing between the Government Department concerned and the United Karnatak Transport Co. nor could a contract be spelt out from the correspondence. However it was found that the Company kept the Railway Receipts with itself and thus failed to use ordinary prudence. The Company was therefore liable for the loss caused to Government. A notice was therefore served on the Company under the Jr. Registrar's No. PC/Coal/FY/2, dated the 28th April 1953 calling upon the Company to pay the amount of demurrage of Rs. 156-10-0 and the Company was informed that on its failure to pay the amount legal steps would be taken to recover the amount. The Company however, refused to pay the amount (*vide* its reply dated 5th May 1953). It has therefore become necessary to file a suit against the Company.

5. (*a*) The Karnatak Transport Co., seems to have its registered office at Kumta. The District Government Pleader is requested to ascertain the fact from the District Officer for Industrial Co-operative and Village Industries, Kumta. The suit should be filed in the Court of the Civil Judge, Senior Division, Karwar.

(*b*) The State of Bombay should be cited as the plaintiff and the United Karnatak Transport Co. Ltd., Kumta as the Defendant.

(c) The cause of action should be stated to have arisen on or about 28th July 1950.

(*d*) Though the receipts were sent to the Company on 24th July 1950 the matter was under correspondence until 27th July 1950 when the District Officer, Industrial Co-operatives Village Industries explained certain points raised by the Company. That letter is reported to have been delivered to the Company personally on 28th July 1950. The delivery of the goods was taken on 2nd August 1950, after recovering the Railway Receipts for the said Company. The District Government Pleader is requested to ascertain the date on which the Railway Receipts were received from the Company by the District Officer. The Company is thus liable for demurrage from 25th July to 2nd August 1950. According to the letter, dated 28th August 1954 of the Joint Registrar for Industrial Co-operative and Village Industries, Bombay State, Poona, the amount of demurrage for the said period comes to Rs. 93-6-10. The District Government Pleader is, however, requested to ascertain from the District Officer, Industrial Co-operatives and Village Industries, Kumta, the exact amount to be claimed from the Company with full details. The amount thus finally fixed should be the principal amount for the recovery of which the suit is to be instituted.

(e) In addition to the amount shown in sub-para (*d*) above, interest at the rate of 6 per cent. per annum up to the date of the suit should be claimed as damages and the court should be requested to pass a decree in favour of Government for the total amount with simple interest at the rate of 6 per cent. from the date of the suit till payment and for costs of the suit.

6. The following evidence both oral and documentary should be adduced in support of the claim :—

(I) The letter No. Gen. K. 30/50, dated the 24th July 1950 from the District Officer for Industrial Co-operatives and Village Industries, Kumta to the United Karnatak Transport Co. Ltd., Kumta (page 119 of the file).

(II) The letter No. 246/50, dated the 24th July 1950 from the United Karnatak Transport Co. Ltd. to the District Officer for Industrial Co-operatives and Village Industries, Kumta (page 169 of the file).

(III) The letter No. Gen. K. 30/50, dated the 27th July 1950 from the District Officer for Industrial Co-operatives and Village Industries, Kumta to the United Karnatak Transport Co. Ltd. (page 171 of the file).

(IV) The telegram issued by the Hubli Office of the Company to its Head Office at Kumta on 31st July 1950 (A copy of the telegram should be produced if required).

(V) The oral statement that will be given by the then District Officer for Industrial Co-operatives and Village Industries, Kumta explaining the circumstances which led him to arrange the transportation of the goods through other agencies (viz. Messrs. Shevade & Co.).

No. 8307/E
Office of the
Remembrancer of Legal Affairs,
Sachivalaya, Bombay, 11th April 1956.

Subject:- Institution of a suit against the United Karatak Transport Co. Ltd. Kumta.

MEMORANDUM.

Attention of the District Government Pleader, Karwar, is invited to this Office Memo. No.1990/E, dated the 27th January 1955, and he is requested to state that No. of the file sent to him with the above memorandum.

O/C

for Remembrancer of Legal Affairs.

To

The District Government Pleader, Karwar.

Issued P.S.D. 11/4

Submitted for sign.

11/4.

J.S

Submitted

amt. D.S.P. reply.

due
2/4.

J.S. Oz
136

No. 291/56. 17/4/56. S 3

From

The D.G.P.Kanara,Karwar.

To

The Remembrancer of Legal Affairs,Bombay.

No. 291 of 1956. Karwar, 17-4-1956.

Sir,

Your letter No.8307/E mis-sent to D.G.P.Nadiad has been forwarded by him to me. The file sent to me with your letter does not bear any number on the front page but it appears from the report of the Joint Registrar that the number of his file is PC/Coir/Fy-12.

Yours faithfully,

District Govt.Pleader.

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21-4-56

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L.D.R.D. No. 11238 dt. 7-4-56.

M.O.R. No 9716/E dt. 30/4/56

Issued
M.O.
30/4

Subd apln cases

File in S. Kanara 9/55

1-5-56

Superintendent

73 55

No. CIP 1456/31097-B,
Development Department,
Sachivalaya,
Bombay, 9th May 1956.

L.D. 10 MAY 1956 E

To

The Joint Registrar for Industrial Co-operatives and Village Industries, Poona 1.

Sub :- Suits : Kanara
For recovering a sum of Rs.93-6-10 on account of demurrage .....

THE S... MENT, L... 1519 E 115-56

Sir,

I am directed to refer to your letter No. Tech/5, dated the 3rd May 1956, on the subject mentioned above and to state that your office file No. PE/Coir/FY/12 has already been forwarded to the District Government Pleader, Kanara by Government in the Legal Department under its Memorandum No. 1990/E, dated the 27th January 1955.

Yours faithfully,

Assistant Secretary to the Government of Bombay,
Development Department.

ORDERS issued after consultation with the Legal Department. Notes remain with this Department and can be seen when required.

Copies forwarded for information to :-
The Legal Department,
The District Government Pleader, Kanara.

esr.9/5.

56

File in S. Kanara 7/55

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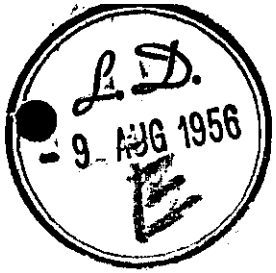
No. 626 of 1956.
Karwar, 3-8-1956.

From

The District Government Pleader,
Kanara, Karwar.



To

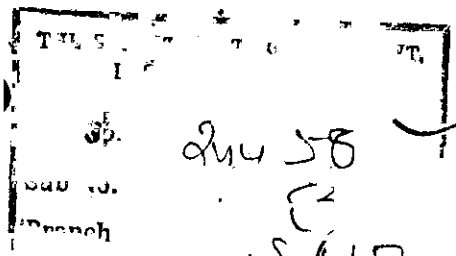
The Remembrancer of Legal Affairs,
Bombay.

Sir,

I am glad to inform you that O.S.No.110-1955 filed against U.K.T.Co. has been decreed in favour of the Govt. However the claim for interest has been disallowed on the ground that interest cannot be claimed on damages.

Yours faithfully,

District Government Pleader,
Kanara, Karwar.



IMMEDIATE.

No. 18538/E

Office of the
Remembrancer of Legal Affairs,
Sachivalaya, Bombay, 18th August 1956.

Subject:-C.S.No.110 of 1956
The State of Bombay
vs.
The United Karnatak Transport Co.Ltd.,
Hubli.

MEMORANDUM.

With reference to his letter No.626, dated the 4th August 1956, the District Government Pleader, Karwar is requested to forward to this office an uncertified copy of judgment immediately and to state what is the last date for filing an appeal.

for Remembrancer of Legal Affairs.

To

The District Government Pleader,
Karwar.

P.C. issue
Monday
18.8.
Issued

61

No. 731 of 1956.
Karwar, 4/9/1956.

From

The District Government Pleader, Kanara,
Karwar.

To

The Remembrancer of Legal Affairs,
Bombay.

Sir,

With reference to your letter No.18538/E, dated the 18th inst. I have forwarded herewith uncertified copy of the judgment in O.S.No.110-1955 as desired by you. Date of decree is 24-8-1956. It is not worth while to file certified copy for interest in view of the Ruling of our High Court

283/E
18/9/56

Yours faithfully,

District Government Pleader,
Kanara, Karwar.

Submitted

An uncertified copy of judgment in C.S.No 110/55 decided against Govt on 31.7.56 is submitted for orders

11/9 Sal(MG)

Received on 29th September 1955
Registered on 30th September 1955
Decided on 31st July 1956
Duration - 9 months and 3 days.

IN THE COURT OF THE CIVIL JUDGE, SENIOR DIVISION, KARWAR,

AT :- K a r w a r.

Ex. No. 78

Civil Suit No. 110 of 1955.

Pleaders.

District Government Pleader.

The State of Bombay — Plaintiff.

against.

Shri P.M.Prabhu.

United Karnatak Transport Company, Ltd., Kumta (Summons to be served on the Manager of the Company at Kumta) — Defendant

Claim - Rs. 123/-

This is a suit by Plaintiff (The State of Bombay) against Defendant (United Karnatak Transport Company Ltd., Kumta) for the recovery of a sum of Rs. 93-10-6 as demurrage for 5 days paid by the Plaintiff to the Railway Company and interest of Rs. 29-5-6 on this amount together with the costs of the suit.

2. The allegations of the Plaintiff in his plaint may be stated like this: The District Officer for Industrial Co-operatives and Village Industries, Kumta placed certain m orders for supply of looms and equipments for the coir factory at Honavar with a firm in Alleppey for the purpose of his factory at Honavar. *The Firm despatched the goods by railway and forwarded the Railway Receipts to the District Officer and he sent them to Defendant on 24th July 1950. Thereafter the District Officer entrusted the work of taking delivery of the said goods to the Defendant and also for transporting the same to Hubli by Motor lorry. Accordingly the said officer forwarded the Railway Receipts to the Defendant Company under his No.Gen/4/30, dated 24th July 1950. The Defendant Company acknowledged receipt of

*o.p.2.

the same and agreed to transport the said goods in instalments by writing to the District Officer. In reply to it, the District Officer informed the Defendant Company accepting the arrangements proposed by the said Defendant. The two wagon loads of the said goods arrived at Hubli station each on 23rd July 1950 and 25th July 1950 but the branch office of the Defendant Company which is situated at Hubli failed to take delivery of the goods in time till 31st July 1950 and on which date the Defendant Company informed the District Officer of its inability to accept the delivery of the goods or to make payment of demurrage charges amounting to about Rs. 1000/- which had been accrued due till then. The Defendant Company failed to return the Railway Receipt to the District Officer in time, but on the other hand the Railway Receipts were returned to the District Officer on 1st August 1950. Thereafter the District Officer rushed to Hubli and made enquiries with the Railway Authorities regarding the remission of the demurrage charges but he was told by the said Railway Authorities that he should pay the demurrage in the first instance and seek for refund. And thereafter the District Officer approached another agent by name Shevade and Co., at Hubli and entrusted the work of taking the delivery and transpert for the said goods to Honavar and this is on 2nd August 1950. Thereafter the District Officer carried on correspondence with the Railway Authorities regarding the refund of the demurrage charges but ultimately he succeeded in getting the refund of demurrage charges to the extent of Rs.883-13-0 and actually the Plaintiff suffered a loss on account of the demurrage to the extent of Rs. 156-10-0. The District Officer wrote to his superior authority viz., Joint Registrar for the Industrial Co-operatives and Village Industries, Poona and the question for demurrage was ~~x~~ examined by the Government and ultimately the *Government called upon the Defendant to make good the loss incurred to Government by way of demurrage and then a notice was served on the Defendant Company on 28th April 1953 *o.p.3.

to pay the amount of demurrage of Rs. 156-10-0 but the Defendant Company refused to pay the amount on the ground that there was no negligence on the part of the Company since the delivery of the goods was taken on 2nd August 1950 after the receiving the Railway Receipts. According to Plaintiff the Company is liable to demurrage from 28th July 1950 to 2nd August 1950. The proportionate demerrage charges would come to Rs.93-6-10 and in addition to this demurrage charges,Plaintiff claims interest at the rate of 6 per cent per annum upto the date of the suit on the said amount of demurrage. The interest would come to Rs.29-5-6 and thus in all the Plaintiff claims a sum of Rs-123-0-0 from the Defendant Company on account of the demurrage charges incurred, due to the negligence of the Defendant Company in not having taken delivery of the said goods in time. Therefore, the Plaintiff claims for a decree in the sum of Rs.123-0-0 with costs as well as future interest.

2. The Defendant Company by its written statement (Ex. No. 8) inter alia contends as follows: The Defendant Company admits the receipt of the letter written by the District Officer for Industrial Co-operatives and Village Industries, Poona deted 24th July 1950 to take delivery of the articles in question from the Railway Authorities at Hubli and to transport them to Honavar and so also the Defendant admits receipt of Railway Receipt Nos. 44 and 45 for taking delivery of the said articles. According to Defendant the delay accrued in not taking the delivery of the said goods is not for Railway Receipt but for want of invoices which usually to accompany the Railway Receipts as the goods shall have to be transported from Hubli to Honavar and on the way the octroi duties at Hubli, Sirsi, Kumta and Honavar are to be paid and therefore as soon as the

Railway Receipts were received the Defendant Company asked the District Officer on 24th July 1950 to send the invoices for the said purpose. But the District Officer wrote back to the said Company on 28th July 1950 saying that the articles in question being meant for the Government Cair Factory at Honavar were exempt from payment of octroi and in the meantime the Kumta Office of the Defendant Company made enquiries with its branch office at Hubli regarding the arrival of the consignment and learnt that the consignment had reached Hubli station on or about 22nd July 1950 and awaiting clearance at the goods shed, Hubli Railway Station. There was absolutely no delay on the part of the Defendant Company to take delivery of the goods till 31st July 1950, but as soon as the letter of the District Officer regarding the octroi was received on 30th July 1950 the Defendant Company directed its branch office at Hubli to arrange for taking further steps, but demurrage charges were accrued since 22nd July 1950 even before the Plaintiff had entrusted the work of transport of these goods to Defendant Company and onthe report of the Defendant Company to the District Officer who intimated to the Defendant Company, that he would himself go to Hubli to settle the question of demurrage with the Railway Authorities and therefore, he took the Railway Receipts from the Defendant Company and went to Hubli personally. There were seris of letters exchanged between Defendant Company on the one hand and the Government on the other. From all these it can be seen that the Defendant Company was never authorised for the Plaintiff to pay the demurrage charges to the Railway Authorities nor was there any stipulation in the agreement between the parties to pay these charges before taking delivery. Hence the allegations about the liability of the Defendant Company are absolutely untenable in law or even in enquity. It is also not admitted that the Defendant Company failed to return the Railway Receipt to the Plaintiff immediately. It is learnt that the demurrage charges have been refunded by the Railway Company to the Plaintiff and therefore it is -

*o.p.4.

contended that the Defendant Company is not at all - liable to reimburse the Plaintiff for any loss on account of the demurrage caused to the Plaintiff even if the Plaintiff was obliged to pay the same to the Railway Authorities and the accumulation of the demurrage charges, according to Defendant, is entirely due to Plaintiffs themselves and therefore, the *Defendant is not liable to pay any amount on that account. It is not true that the Defendant Company had kept the Railway Receipts with itself nor is it true that it failed to use ordinary prudence. Defendant Company has done everything in its power in the matter as a prudent businessman would have acted under the circumstances. It is denied that the Defendant Company had kept the Railway Receipts with it wrongfully for any length of time. The Plaintiff terminated its contract withthe Defendant Company abruptly without any valid reasons for the same and on that - account the Defendant Company has suffered loss which is n in law and in equity also ~~is~~ to be reimbursed by the Plaintiff. The interest claim is not allowable in law. The Court has no jurisdiction to try the suit as the cause of action arose at Hubli which is outside the jurisdiction of this Court. The present suit is filed beyond the period prescribed by Limitation in as much as the cause of action has arisen on 24th July 1950 and 28th July 1950 as per recitals in the plaint and the suit as having been filed on 29th September 1955 is clearly time barred. Hence for many aspects of the - case Defendant cannot be held liable to Plaintiff's claim made out in the suit. Under the circumstances Defendant prays that the Plaintiff's suit should be dismissed with costs.

*o.p.5.

The interest claimed on demurrage charges is no justifiable

3. On these contentions the following issues were framed at Ex. No. 15, and set down for

hearing.

1. Whether the Plaintiff proves that the Defendant Company, had undertaken to take delivery of the articles in question from the Railway Company and had received the Railway Receipts for that purposes ?
2. If so, does Plaintiff prove that the Defendant acted negligently in not returning the Railway Receipts immediately after it was found that the Defendant could not get the delivery.?
3. Whether the Plaintiff proves that he had paid the demurrage to the Railway Company as claimed in the suit ?
4. Does he further prove that he was compelled to pay the demurrage amount in question on account of the conduct of the Defendant in not taking delivery of the articles in question from the Railway Company without any justifying cause as contended by the Plaintiff ?
5. If so, to what extent and from what period is Defendant liable to indemnify the Plaintiff ? c.p.6.
6. Is Plaintiff entitled to claim interest on the said amount ? If so, at what rate ?
7. Whether the suit is in time ?
8. Whether the Defendant proves that this Court has no jurisdiction to try this suit ?
9. What order ?
10. What decree ?

4. My findings are

1. Yes.
2. Yes.
3. Yes,
4. Yes.
5. As per claim in suit.
6. No.

7. Yes.

8. This Court has got jurisdiction.

9. }
10. } See order below

Reasons

5. This is a suit by the State of Bombay against the United Karnatak Transport Company, Ltd., for the recovery of demurrage charges in the sum of Rs.93-10-6 as well as interest thereon in the sum of Rs.29-5-6, in all Rs.123/-. The following circumstances gave rise to the filing of the present suit: There was coir factory at Honavar. One District Officer for Insustrial Co-operatives and Village Industries, Kumta was in charge of the said factory. He ordered certain goods such as looms and other equipments for the said coir factory from a Firm in Alleppe. That Firm despatched the said goods (174 pieces) to Hubli by railway and sent the Railway Receipts in the name of that District Officer for Insustrial Co-operatives and Village Industries. Then the District Officer approached the Defendant Company, in the capacity of a public carrier transport the said goods from Hubli to Honavar after taking delivery at the Hubli Railway Station and for this *purpose the District Officer gave the Railway Receipt to the Defendant Company, on 24th July 1950 and the Defendant-Company did not care to take delivery of the goods till 2nd August 1950 and on which date the District Officer through the help of another Agent at Hubli arranged for the taking of the delivery and transport. In that deal the Government was put to a loss of a sum of Rs.93-10-6 by way of demurrage and this demurrage is according to Plaintiff due to the negligence of the Defendant Company in not having taken the delivery of the said goods in time and therefore the Plaintiff claims to recover the said sum with enterest.

The defence of the Defendant Company may be stated in

short like this : There was no agreement to take delivery of the goods of the Plaintiff at Hubli but all that was agreed was to transport the said goods from Hubli to Honavar. The District Officer himself is responsible in not giving the Railway Receipts to the Defendant Company in time and hence the Defendant Company cannot be charged for being negligent in taking the delivery of the said goods. The Plaintiff has recovered all the demurrage charges from the Railway Authorities and therefore nothing is due to Plaintiff by way of demurrage charges. There is no agreement for interest to be paid on the said amount and finally the Defendant contends that the suit is not brought in time and much less this Court has jurisdiction to try this suit in as much as the cause of action has arisen at Hubli and which Court alone is competent to decide the suit.

6. It is admitted fact that the Defendant Company is a public carrier having its divisional head-quarters situated at Kumta and also it transports goods for hire. There is no dispute regarding the fact that the Defendant Company is in the position of an agent to the State of Bombay withrespect to the entrustment of the work of taking the delivery and transportation of the goods from Hubli to Honavar.

7. The important factor involved in this case is very small one: how far Defendant Company is held to be liable on account of its negligence in causing the State of Bombay suffer by way of demurrage charges in not taking the delivery of the goods in time. The other contentions of the Defendant are all formal and they do not need elaborate discussion. There is no evidence in this case except that of Plaintiff. The District Officer ShriHegde is examined at Ex.No.76 and the rest of the evidence rerers to various letters exchanged between the District Officer as well as the Joint Registrar for Industrial Co-operatives and Village Industries, Poona and also the reply given by the Defendant Company. These correspondences are filed with Ex.No.9, by the Defendant Company and they are Exs.Nos. 58 to 74 and the Plaintiff has filed the correspondences with Ex.No.11. They are

•ö.p.8.

Exs. Nos. 34 to 57. The only short point, as I have said, concerns is about the negligence of the Defendant Company if at all, not to charge him with the liability in this suit. For that purpose issue Nos. 1 and 2 are framed and the burden is on the Plaintiff to prove whether the Defendant Company had undertaken to take delivery of the articles in question from the Railway Company and also the Plaintiff is required to prove further whether the Defendant acted negligently in not returning Railway Receipts immediately. Before we go to discuss these two issues other smaller issues such as limitation and jurisdiction may be disposed of as they do not require much time and space also.

8. Issue Nos. 7 and 8.

The Defendant Company has its office situated at Kumta and the District Officer's Coir - Factory is situated at Honavar and the agreement was that the Defendant Company is to transport, after - taking delivery, the goods from Hubli to Honavar and the place of agreement is within the jurisdiction of this Court and moreover Defendant's place of business is also withing the jurisdiction of this Court. Under section 20 of the Civil Procedure Code, subject to limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction (a) the Defendant. or each of the Defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or ..... (c) the cause of action, wholly or in part arises. The relationship between the Plaintiff and the Defendant Company is, in my = opinion, in the nature of principal and agent and in a [illegible] damages caused by the agent's alleged negligence, cause of action is said to have arisen in

*o.p.9.

the place where the agent's negligence ocurred and that the Court elsewhere has no jurisdiction. It is the contention of the Defendant Company that the delivery is to take place at Hubli and the Hubli Court has got jurisdiction. There is no force in this argument in as much as the agreement took place at Kumta and the transportation is to take place from Hubli to Honavar which is the place of destination and therfore the proper forum would be this Court, and not that of Hubli Court.

The next question is regarding the limitation. It is the contention of the Defendant Company that the suit of the Plaintiff is not in time. The contention is no doubt general and vague but still if we go to read article 149 of the Indian Limitation Act, it is quite clear that any suit by or on behalf of the Central Government or any Provincial Government except a suit before the Supreme Court in the exercise of its orginal jurisdiction - sixty years - when the period of limitation would begin to run under this Act against a like suit by a private person. When it was argued by the learned District Government Pleader that his suit is under article 149 the learned pleader for the Defendant in fairness conceded that he does not press forth the question of limitation as well as jurisdiction. Accordingly I record my findings on both the issues as above.

9. Issue No. 1

In order to discuss this issue we must go back to Ex. No. 58, letter written by the District Officer for Industrial Co-operatives and Village Industries to the Defendant Company for taking delivery and transport the goods in question. Ex. No. 58 is dated 24th July 1950. It is addressed to the Manager, United Karnatak Transport Company, Ltd., Kumta. He mentions in that letter that two wagon loads of articles for the coir factory containing in all 174 pieces are despatched, " Please arrange to take delivery and transport the same to Honavar. Your bill of costs may please be sent to this office in triplicate for payment. Please acknowledge receipt of the Railway Receipts. The R.T.A. is being requested to give necessary coupons for petrol." By this

*o.p.10.

letter the District Officer specifically mentions that the Defendant should take the delivery of the said goods and transport and he also sends the Railway Receipts to the Defendant Company for taking delivery of the goods at Hubli Station. If we read Ex. No. 59 the letter written by the Secretary of the Defendant Company to the District Officer that the Defendant Company requires the invoices for the transportation of the goods as the Company shall have to pay octroi duties at Sirsi and Hubli and the Defendant Company also states in that letter that goods cannot be transported at one time but by instalments Ex. No. 59 is all the while silent regarding that the Company is not willing to take delivery but their work is only for transportation. In the absence of such reply I have no other alternative but to infer that the Defendant Company agreed not only for transport but also to take delivery and then transport. For this purpose let us go to para 2 of the written statement Ex. No. 8. In that para Defendant Company admits the Railway Receipts as well as the contract to take delivery but later on goes to say that the delivery could not be taken because the District Officer failed to send the invoices which were quite essential for the transportation of the goods to Honavar. The stand taken by the Defendant Company is absolutely incorrect, for transportation cannot be complied unless the delivery is taken and delivery cannot be taken unless the demurrage charges are paid at the Railway Officer. So, all these things were to be taken into consideration before the transportation is effected viz., demurrage charges, delivery and transportation. The Defendant Company cannot transport the goods without taking the delivery. Delivery cannot be taken without payment of demurrage charges. Therefore, the Defendant Company by his agreement with the District Officer plainly agreed to take delivery of the goods as well as transport them to Honavar and which agreement entailed the Defendant

Defendant Company to probe into the matter whether any demurrage charges are to be borne by the Defendant Company before delivery could be taken. In *this affair Defendant Company has failed to use reasonable and prudent diligence as public carrier would do. If Defendant Company did not agree to take delivery but only the Defendant Company consented to transport the goods he could have very well said to the District Officerand would have refused the Railway Receipt. The fact that the Railway Receipt from the District Officer were taken by the Defendant Company at Kumta and then the Kumta Office made reference to the branch office at Hubli in that respect goes to suggest that the Defendant Company did agree not only for transport but to take delivery of the goods also and which circumstance demanded to give demurrage charges if any to be paid to the Railway Authorities. If we read again carefully Ex. No. 58 the letter of the District Officer viz,, 'your bill of costs may please be sent to this office in triplicate for payment', this bill of costs not only includes the transport charges but also delivery charges. Ex. No. 62 is a letter written by the District Officer to the United Karnatak Transport Company, regarding the invoices. In this letter the District Officer explains as these articles are meant for Government Coir Factory-cum-Training Institute, Honavar, these are exempted from payment of octroi. The case of the Plaintiff is for recovery of the demurrage & charges incurred not on account of the delay or lossduring the transport of the goods by the Defendant Company but for not taking the delivery of the goods resulting in demurrage charges. There was nothing in the way of the Defendant Company to have obtained the delivery and the unnecessary correspondence that passed between the Company and the District Officer is unjustifiable and the intention of the Defendant Company seems though not of the Defendant Company at Kumta at least the Hubli branch was nervous regarding the truck arrangements as well as the monetary situation in his office about the demurrage. The fact that the Railway Receipts were with the Defendant from 24th July 1950 to 31st July 1950 without taking delivery and the Defendant made further enquiries with the District

Officer clearly shows that Defendant h.d agreed to take delivery. Therefore, in my opinion, the first issue is sufficiently proved by the Plaintiff to show that the Defendant Company did undertook to take delivery of the articles from the Railway Company and also the Railway Receipts were received by the Defendant Company. Hence I answaer this issue in the affirmative.

*o.p.12. 10. Issue No. 2:

This issue is very important. On the findihg of this issue only the Plaintiff succeeds or fails. If Plaintiff proves successfully by showing that the Defendant Company, was negligent in not taking the delivery of the goods in time and thereby it entailed loss tc Government and the Defendant is held liable. For this purpose let us go back to the correspondence between the District Officer on the one hand and the Defendant Company on the other. By Ex. No. 58 the District Officer not only ga gave the Railway Receipts, but also instructed the Agent-Defendant Company to take delivery of the goods and send his bill of costs to his office. On the very day the Kumta Office/ of the Defendant Company wrote to its branch office at Hubli enquiring whether the goods of the Coir Factory of Honavar received and If received send a telegram immediately (vide Ex. No. 60), but unfortunately this Hubli man sends a telegram at Ex. No. 61 after four days, i.e., on 28th and the wire was despatched from Hubli at 18 hours and it was received at Kumta at 8-10 stating that the 'invoices 83 and 84 consignments received before six days arrange immediately'. By this wire the Hubli branch meant that before delivery is taken demurrage shall have to be paid also to the Railway Company. Again th the Defendant Company by Ex.No.63 wrote to the Hubli branch stating that the delivery to be taken only when the trucks are made available to him and the goods should be sent by

instalments, because the river is in floods. From Ex. No. 63 it becomes evident that the Railway Receipts were sent to Hubli office on 29th July 1950 and the Defendant Company Kumta was not justified to have kept the Railway Receipts with them from 24th to 29th for no reason. This conduct on the part of the Defendant Company goes to suggest that they have not behaved in a business- like manner with the District Officer in their dealings. It may be that the Plaintiff has not claimed the demurrage charges from 24th (the day on which the Railway Receipts were given to Defendant Company) but the Plaintiff has claimed the demurrage charges proportionately for 5 days only, from 28th July 1950 to 1st August 1950, both days inclusive. The unnecessary enquiry regarding the invoices that passed between the District Officer on the one hand and the Defendant Company on the other is unjustifiable because the invoices were not at all needed for taking delivery of the goods. The invoices might be useful for the purpose of transportation. The Plaintiff would not have minded if there was delay on the part of the Defendant Company in transporting the goods to Honavar. All that is mattered with the Plaintiff was regarding the demurrage charges that had to be paid to the Railway Company due to fault of the Defendant Company in not taking the delivery of the goods immediately. Please note the last line in Ex. No. 63 Viz., ಕುಮಟ R.Rs. ಗಳ ಲಾರಿಗಳು ಇಲ್ಲಿಂದ ಅಲ್ಲಿಗೆ ಬರುವ ತನಕ ಮಾಲಿನ ಡೆಲಿವರಿ ತಗೆದುಕೊಳ್ಳಬೇಕೆಂಬ ನಂಬಿಕೆ By this the Defendant Company informs its branch office at Hubli that the delivery should be taken only when the trucks are made available from Kumta to Hubli for this purpose. There might be some difficulty with the Defendant Company at Hubli regarding the storage of the goods taken delivery of, but the Defendant Company as a public carrier must note that he should cater to the needs of the public in a most business-like manner and not according to the convenience or according to the availability of their trucks

at Hubli . From the intention of the letter it may be gathered that the Defendant Company has unnecessarily made the Plaintiff suffer in the demurrage charges. From Ex. No. 63 it is evident that the Defendant Company kept the Railway Receipts with them till 30th. The District Officer awaited till 31st July 1950 and by which time the Defendant Company also made aware of the gravity of the situation regarding the demurrage charges of its Hubli branch and wrote an urgent letter to Hubli asking him to come down to Kumta for personal talk (vide Ex. No.64). The District Officer came down to Kumta on 31st and learnt that no arrangements are made by the Defendant Company regarding the taking delivery of the goods and as he had no bus then at Kumta to go to Hubli, he started to Hubli on the following day on 1st August 1950 and reached there at about 4-30 p.m. and himself and the Hubli branch- - secretary of the Defendant Company contacted the Railway Authorities and learnt that unless the demurrage charges are paid the goods cannot be given delivery * and the authorities in the goods shed advised the District Officer if he so desired to contact the D.T.S. in that respect. By this time the goods-shed was closed and the District Officer and the Defendant's branch-secretary at Hubli approached the D.T.S. and put forth their contentions but the D.T.S. advised that the demurrage charges must be paid in the first instance and the refund should be claimed. Accordingly the District Officer wrote to his superior, i,e., Joint Registrar for Industrial Co-operatives and Village Industries, Poona and the next day i.e., 2nd August 1950 giving up the dealings with the Defendant Company, the District Officer approached one Mr.Shevde and got the goods, who bore the charges of demurrage and arranged for transport to Honavar (vide Ex.- No. 76 the statement of the District Officer). From these circumstances it becomes abundantly clear that the Defendant Company has not acted cautiously and as ordinary prudent

*o.p.14.

man could do. The Defendant Company careless as he was did not fore-see that he is dealing with the Government whose interests are concerned with the public and thereby, if delay is made the Government would be put to loss. Accordingly the Defendant Company in my opinion is to be blamed for not returning the Railway Receipts to the District Officer if in his opinion the delivery could not be taken due to heav, demurrage charges or for some other reasons. The only fault that I could find with Defendant Company is that without any reason the Railway Receipts were kept with them till 31st July 1950 without taking any action in the matter, which goes to suggest that Defendant Company is to be blamed and is liable for the demurrage charges incurred due to his negligence to the Plaintiff. Therefore, I answereissue No. 2 in the affirmative.

11. Issue No. 3

This issue is not so important and material in as much as the Plaintiff has not claimed the full demurrage charges but proportionately they have claimed. If we read Ex. No. 37, the letter from the District Officer to the Joint Registrar Industrial Co-operatives and Village Industries, Poona it becomes evident that the demurrage charges as shown in the letter come to Rs. 1040-7-0, but as advised * by the D.T.S. the Village Industrial Authorities applied for refund and the Chief Commercial Superintendent of the M.S.M.Railways by his letter (Ex. No. 51) allowed refund of the demurrage charges to the extent of Rs. 883-13-0 and the same was made payable as per Ex. No. 53 to the Joint Registrar for Industrial Co-operatives and Village Industries, Poona. Thus if we deduct that some of Rs. 883-13-0 in the total amount paid to the Company the net amount incurred as demurrage charges would come to Rs. 156-10-0. It is entirely a different thing that the Plaintiff has claimed only proportionately demurrage charges for five days but on this issue it is quite sufficient to say that

*o.p.15.

the Plaintiff did pay the demurrage charges to the Railway Company and this fact cannot be disputed and the contention of the Defendant that the Plaintiff has recovered from the Railway Company whatever demurrage charges were paid by him is negatived. Thus I hold on issue No. 3 that Plaintiff has sufficiently proved that he has paid the demurrage charges to the Railway Authorities and hence I answer this issue in the affirmative.

12. Issue No.

The Plaintiff is called upon to prove a further thing viz., that these demurrage charges were paid due to the conduct of the Defendant Company, in not taking the delivery of the articles in question. It has already been discussed on issue Nos. 1 and 2 that the Railway Receipts were unauthorisedly retained by the Defendant Company, with themselves from 24th upto 31st and 1st August was spent with the District Officer in moving to the Railway-shed after enquiry regarding the demurrage charges and the clear blame is upon the Defendant in not having returned the Railway Receipts to the District Officer in time. The finding on issue No. 4 is entirely dependent upon the finding on the previous issues viz., issue Nos. 1 to 3 and the negligence on the part of the Defendant actually caused Plaintiff to pay demurrage charges to the Railway Company. Therefore, on this issue also, looking to the correspondences that * passed between the District Officer and the Defendant Company, as per Exs. 58 to 74 I have been satisfied beyond doubt that the Defendant Company due to its own negligence failed to take delivery which resulted in the Plaintiff to pay such huge sum to the Railway Company by way of demurrage charges. Hence I answer this issue in the affirmative.

*o.p.16.

13. Issue No. 5

The Plaintiff has claimed the demurrage

charges proportionately for five days i.e., from 28th July 1950 to 1st August 1950, both days inclusive at the rate of 1 anna per hour per wagon ton and the consignment of the Plaintiff was 80 tons (Vide the statement of the Plaintiff at Ex. No. 76, para 6). On this calculation the Plaintiff has claimed in all Rs. 93-10-6 and the claim made is proportionate and also justifiable, because even if the Defendant Company had returned the Railway Receipts to the District Officer on 28th at the latest nothing could be done by the District - Officer going personally to Hubli or to have arranged through some other agent to take delivery of the goods. Therefore, the claim made by the Plaintiff is very reasonable and justifiable too, under the circumstances. Therefore, Defendant is liable to indemnify the Plaintiff, in other words to reimburse the Plaintiff in the loss caused to him by way of demurrage charges from 28th July 1950 to 1st August 1950 at the above rate. Hence I answaer this issue as above.

14. Issue No. 6

The Plaintiff has claimed interest at the rate of 6 per cent per annum on Rs. 93/- from 2nd August 1950 till the date of suit. It is the contention of the Defendant that the Plaintiff is not entitled to any interest in as much as there was no agreement between the parties to pay interest. It whould be noted that if we read Ex. No. 58 to 59, the - letters passed between the District Officer and the Defendant Company, the question of interest is all along silent. It may be due to the fact that the question of interest could not have been foreseen by the Plaintiff but on general principle it seems that the Plaintiff claims interest on the ground that the Defendant Company made to suffer the Plaintiff by depriving of this amount from its legitimate use. In other words the claim of *the Plaintiff seems to be that the interest to be awarded by *o.p.17. way of damages which is rather very harsh in my opinion. The learned pleader for the Defendant draws my attention to the Bombay rulings reported in 40 Bombay Law Reporter, at page No.

746 as well as of 46 Bombay Law Reporter, at page No.408. In 40 Bombay Law Reporter (Ruttanji Ramji Vs. Bengal Nagpur Railway Company ltd., Privy Council ruling reported in 40 Bombay Law Reprter, Page No. 746) it has been held that, in the absence of any usage or any express or emplied contract an award of interest for the period before institution of the suit on the sum found due under the contract is not equitable, but in 46 Bombay Law Reporter - Municipal Borough of Ahmedabad Vs. Vadilal Dalsukharam Shah, page No. 405, which is a ruling by SirJohan Beaumont, Kt., Chief Justice, and it refers to the rafund by the Municipality. In that case by the order of the Court the Municipality refunds a sum of moneys wrongfully recovered from a rate payer by way of rates and the rate payer filed a suit for the recovery with interest. His Lordship, the Chief Justice observed that the rate payer is not entitled to claim interest upon the amount for the period during which he was deprived of the use of his money. His Lordship went on to observe, in a case which does not fall within the Interest Act, 1839, interest cannot be allowed by way of damages but it may be allowed. where there is an agreement for thepayment of interest, or it is payable by the usage of trade having the force of law. In the present case the Plaintiff has not only failed to prove an agreement to pay interest but also he has failed to prove the trade usage having the force of law. In the absence of such things if the interest is allowed, in my opinion, to will amount to damages. Following the ruling of our High Court in 46 Bombay Law Reporter I disallow the claim for interest of the Plaintiff and pass a decree only for the demurrage charges, he has paid to the Company.

15. Before I close a word or two regarding the the sense of public duty imposed upon the public carriers will have to be stated. It is an admitted fact that the Defendant Company is an old and of established reputation regarding the transportation of the goods from Upghats

to the coastal places. During the *course of the argument of the learned pleader for the Defendant Company, it came to light that the Defendant Company, has not come across such experience by way of suits for negligence. But in my opinion, the present suit is an eye opener for public carriers. No doubt the sum claimed by the Plaintiff is quite meagre, a principle is involved in this case viz., that the public carrier as an agent whose duties have been enumerated under section 211 of the Indian Contract Act should bear in mind the responsible duty of catering to the needs of the public and his sole moto should be not to cause inconvenience, much less, less of money and if this moto of public service is kept in mind I think, like in western countries the relationship between the principals and the agents would go smooth and without any inconvenience. With this I conclude by passing the following order.

O r d e r.

Defendant do pay to Plaintiff a sum of Rs. 93-10-6 with costs and future interest at 4 per cent per annum on Rs. 93/- from the date of suit till full satisfaction. Defendant should bear his own costs.

31st July 1956.

Sd. N.S.Kulkarni.
Civil Judge, Senior Division,
K a r w a r.

Co

Sol.(M.L.).

Kanara Suit No.110 of 1955.

The above suit was brought on behalf of Govt. to recover from the defendant Motor Transport Co. Rs.93-10-6 on account of demurrage which Govt. was compelled to pay to the Railway Co. owing to the defendant Co.'s negligence and Rs.29-5-6 for interest thereon.

2. Govt. had ordered certain goods from Alleppy. The goods were to be carried by railway from Alleppy to Hubli. From Hubli they were to be further carried to Honawar by road. The deft. is a motor transport company doing the business of carrying goods by road from Hubli to Honavar. The goods required by Govt. were despatched by railway from Alleppy to Hubli. Govt. handed over the Railway Receipts to the deft. Co. on 24-7-1950 for taking delivery of the goods from the railway and carrying them from Hubli to Honavar. The Deft. Co. failed to take delivery of the goods from the Railway Co. Ultimately Govt. took back the railway receipts from the deft. Co. and took delivery of the goods from the railway on 2-8-50. For the delay in taking delivery from the railway, Govt. had to pay Rs.93-10-6 for demurrage to the Railway Co. This delay in taking delivery of the goods was caused by the Deft. Co.'s negligence in taking delivery of the same. Hence Govt. claimed from the Deft. Co. the said sum of Rs.93-10-6 paid for demurrage and Rs.29-5-6 for interest thereon from 2-8-50 to the date of institution of the suit.

3. The Civil Judge has decreed the Govt.'s claim for the principal amount of Rs.93-10-6 paid for demurrage but rejected its claim for Rs.29-5-6 on account of interest before the institution of the suit. His judgment is at slip O.

4. The Civil Judge's order rejecting the claim for interest before the institution of the suit is well-supported by the rulings in 40 B.L.R. 746 and 46 Bom.L.R. 408 which he has cited in his judgment. The Dist. Govt. Pleader in his letter at slip P says that this is not a fit case for appeal. I agree with him. The Civil Judge's decision in the suit may be acquiesced in.

13-9-56.

DEVELOPMENT DEPARTMENT
File No.
Serial No.
Date

MAP/-
13/9.

14.9.56 B 53698

-X'NO-20684/E
dt- 14/9/56

65

No. 2134/E.
Office of the
Remembrancer of Legal Affairs,
Sachivalaya, Bombay, 20th September 1956.

Subject: C.S.110 of 1955.
The State of Bombay.
Vs.
The United Karnatak Transport Co.Ltd.,
Kumta.

MEMORANDUM:

With reference to his letter No.731 dated the 18th September 1956 on the subject noted above, the District Government Pleader, Karwar, is informed that Government has decided to acquiesce in the decision of Civil Judge, Senior Division, Karwar dated the 31st July 1956.

O/C.

Remembrancer of Legal Affairs.

To

The District Government Pleader,
Kanara, Karwar.

Copy forwarded with compliments to the Collector of Kanara, Karwar.

DVD/19.9.

Issued
20/9

Submitted for signature.

20/9

19/9

SOC. (RL)

8

Submitted after issue.
File in S. Kanara 9/55

21/9

J.S. 21/9

S Kanara 9/55
22-9-50

In the Court of the Civil Judge, Senior Division, Karwar.

O.S.No.110 of 1955.

District Govt Pleader.

The State of Bombay — Plff

against

The United Karnatak Transport Co. Ltd., Kumta by its Manager at Kumta — Deft

Claim - Rs.123/- for all purposes.

x x x x x

x x x x

Order.

Deft do pay to Plff a sum of Rs.93-10-6 with costs Rs.47-9-0 and future interest at 4 % per annum on Rs.93/- from date of suit till full satisfaction.

Deft should bear his own costs.

Plff do pay to Deft ~~Rx21~~ Rs.3-12-0 being the costs of adjournment granted allowing the costs of Deft irrespective of the result of the suit.

Given under my hand and the seal of the Court this 31st day of July 1956.

Sd.N.S.Kulkarni,
Civil Judge,S.D.,Karwar.

Bill of costs.

Plaintiff.		Defendant.
1. Stamp on plaint Exh.1:	12- 3-0	x x x
2. Stamps on Exhs.10,16,20,22, 25, 28 & 31:	4- 4-0	
3. Sub-money to witnesses, Exhs.23 and 29:	28- 8-0	
4. Pleader's fee:	18-12-0	
5. Stamps for process fees, Exhs.1 and 16:	1-14-0	
	65- 9-0	

Given under my hand and the seal of the Court this 31st day of July 1956.

Sd.N.S.Kulkarni,
Civil Judge,S.D.,Karwar.

"True copy"

Distridt Government Pleader,
Kanara,Karwar.

9

No. 19900/E
Office of the Remembrancer of Legal Affairs
Sachivalaya, Bombay, 9th September 1955.

Subject:- Institution of a suit against the United Karnatak Trans-port Co.Ltd.,Kumta.

Memorandum:

With reference to his letter No.752, dated the 20/22nd August 1955, on the above subject, the District Government Pleader is informed that according to the information received from the Joint Registrar for Industrial Co-operative and Village Industries, Poona the United Karnatak Transport Co. Ltd., is still in existence. A copy of the endorsement No.Eng.5 dated 2nd August 1955 from the Joint Registrar giving the information is enclosed. The District Government Pleader is therefore requested to file a suit against the above firm.

x x x x x

x x x x x x

Sd. Illegible,

for Remembrancer of Legal Affairs.

To

The District Government Pleader,
Kanara, Karwar.

"True copy"

Dist.Govt.Pleader,
Kanara,Karwar.